

**USSN 10/676,414**

**REMARKS**

Claims 1-5 and 8-21 are pending in this application.

Claims 1-5, 8 and 11-21 are allowed.

Claims 9 and 10 are rejected.

The final office action dated September 27, 2004 indicates that claims 9 and 10 are rejected under 35 USC §102(e) as being anticipated by Daughton et al. U.S. Patent No. 6,538,921. The rejection of claim 9 has been rendered moot by the cancellation of claim 9. The rejection of claim 10 is respectfully traversed.

Claim 10, which has been rewritten in independent form, recites a method of fabricating a magnetic memory element. The method comprises forming a ferromagnetic data layer with a non-symmetric arrangement of controlled nucleation sites. The nucleation sites have a uniform size and shape.

The office action cites figures 6 and 9b of Daughton et al. Figure 6 appears to show a memory cell structure 21 including a data layer 12 having opposite ends with the same taper. Figure 9b shows a cell structure in which one end is tapered more gradually than the other end. It appears that the symmetry is changed by changing the shape/size of the ends .

However, Daughton et al. do not teach or suggest a method of changing the symmetry without changing the size and shape of the ends. Because Daughton et al. do not teach or suggest a single cell structure 21 having a non-symmetric arrangement of ends with the same size and shape, the rejection of claim 10 should be withdrawn.

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An object to the specification is noted. Although there is no basis for the objection (the MPEP does not require an Abstract to have a length greater than fifty words), the objection has been rendered moot by an amendment above to the abstract.

The examiner is respectfully requested to issue a notice of allowability. If any issues remain, the examiner is invited to contact the undersigned to discuss those remaining issues.